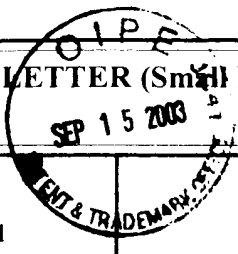
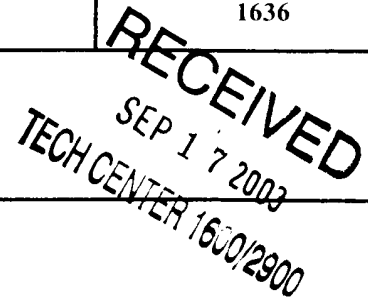


1676

<b>AMENDMENT TRANSMITTAL LETTER (Small Entity)</b> Applicant(s): Joseph A. Rothnagel, et al.		Docket No. 13711
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Serial No. 09/880,253	Filing Date June 13, 2001	Examiner T. McKelvey	Group Art Unit 1636
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Invention: **EXPRESSION MODULATING SEQUENCES**

TO THE COMMISSIONER FOR PATENTS:

Transmitted herewith is an amendment in the above-identified application.

☒ Small Entity status of this application has been established under 37 CFR 1.27 by a verified statement previously submitted.

☐ A verified statement to establish Small Entity status under 37 FR 1.27 is enclosed.

The fee has been calculated and is transmitted as shown below.

CLAIMS AS AMENDED					
	CLAIMS REMAINING AFTER AMENDMENT	HIGHEST # PREV. PAID FOR	NUMBER EXTRA CLAIMS PRESENT	RATE	ADDITIONAL FEE
TOTAL CLAIMS	137 -	137 =	0 x	\$9.00	\$0.00
INDEP. CLAIMS	9 -	9 =	0 x	\$42.00	\$0.00
Multiple Dependent Claims (check if applicable) <input type="checkbox"/>					\$0.00
TOTAL ADDITIONAL FEE FOR THIS AMENDMENT					\$0.00

☒ No additional fee is required for amendment.

☐ Please charge Deposit Account No. \_\_\_\_\_ in the amount of \_\_\_\_\_

☐ A check in the amount of \_\_\_\_\_ to cover the filing fee is enclosed.

☒ The Director is hereby authorized to charge payment of the following fees associated with this communication or credit any overpayment to Deposit Account No. **19-1013/SSMP**

☒ Any additional filing fees required under 37 C.F.R. 1.16.

☒ Any patent application processing fees under 37 CFR 1.17.

Signature

Dated: **September 12, 2003**

**Frank S. DiGiglio**  
Registration No. 31,346  
Scully, Scott, Murphy & Presser  
400 Garden City Plaza  
Garden City, New York 11530  
(516) 742-4343

I certify that this document and fee is being deposited on <b>Sept. 12, 2003</b> with the U.S. Postal Service as first class mail under 37 C.F.R. 1.8 and is addressed to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.
 Signature
<b>Frank S. DiGiglio</b> Typed or Printed Name

CC:  
**FSD/XZ:ab**



**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

**Applicants:** Joseph A. Rothnagel, et al.

**Examiner:** T. McKelvey

**Serial No.:** 09/880,253

**Art Unit:** 1636

**Filed:** June 13, 2001

**Docket:** 13711

**For:** EXPRESSION MODULATING  
SEQUENCES

**Dated:** September 12, 2003

Commissioner for Patents  
P. O. Box 1450  
Alexandria, VA 22313-1450

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**RESPONSE TO THE OFFICE COMMUNICATION DATED AUGUST 27, 2003**

Sir:

In the Office Communication dated August 27, 2003, the Examiner states that the reply mailed on June 9, 2003 is not fully responsive to the prior Office action because certain elected claims, as indicated by Applicants, have been canceled, and certain new claims have been added in a response mailed on February 28, 2003. The Examiner has required Applicants to correctly indicate which pending claims correspond to the elected subject matter.

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**CERTIFICATE OF MAILING UNDER 37 C.F.R. §1.8(a)**

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Assistant Commissioner for Patents, Washington, DC 20231 on September 12, 2003.

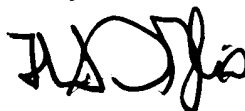
Dated: September 12, 2003

  
Frank S. DiGiglio

Applicants respectfully submit that in the response mailed on February 28, 2003, Applicants already requested the Examiner to include added claims 96 and 98 for examination with the elected claims. In any event, assuming that the amendment to the claims made on February 28, 2003 has been entered in its entirety, Applicants provisionally elect, with traverse, the subject matter of Group II, Claims 1, 3-5, 7, 32-33, 35, 42-43, 45-51, 75, 77-79, 81-87, 89-91 and 93-95, as well as previously added claims 96 and 98, directed to methods of modulating the expression of a genetic sequence by introducing one or more ATG triplets. In connection with this group election, Applicants further provisionally elect, with traverse, SEQ ID NO: 5 (hγ-UTR mRNA), for further prosecution. The grounds for traversing the Restriction Requirement were set forth in the response filed on February 28, 2003, and June 9, 2003, respectively.

In view of the foregoing remarks, it is respectfully urged that the Examiner reconsider and withdraw the requirement for restriction and provide an action on the merits with respect to all the claims.

Respectfully submitted,



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